

MT LEGISLATIVE HISTORY

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Chapter 476 19 82

Bill H (S) 241

Original bill & hist. /C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Mar 18 ✓C

Hearing Date(s) Feb 06 ✓C

Mar 23 ✓C

Feb 20 ✓C

 C

 C

 C

 C

Date Out Mar 23 ✓C

Feb 20 ✓C

Did this bill originate in an interim committee? Yes No

Committee

Report

SENATE BILL NO. 241

INTRODUCED BY KEATING, SANDS, GAGE, MERCER

BY REQUEST OF THE DEPARTMENT OF JUSTICE

IN THE SENATE

JANUARY 28, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 20, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 21, 1987	PRINTING REPORT. SECOND READING, DO PASS.
FEBRUARY 23, 1987	ENGROSSING REPORT. THIRD READING, PASSED. AYES, 49; NOES, 0. TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 24, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
MARCH 23, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 28, 1987	SECOND READING, CONCURRED IN.
MARCH 30, 1987	THIRD READING, CONCURRED IN. AYES, 97; NOES, 0. RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 2, 1987

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 3, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 *Senate* BILL NO. *241*
 2 INTRODUCED BY *Featuring Senate*
 3 BY REQUEST OF THE DEPARTMENT OF JUSTICE
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING
 6 WHAT ITEMS ARE SUBJECT TO FORFEITURE BECAUSE OF THEIR
 7 CONNECTION TO DANGEROUS DRUG OFFENSES; PROVIDING FOR
 8 DISPOSITION TO THE ATTORNEY GENERAL, FOR DRUG LAWS
 9 ENFORCEMENT AND EDUCATION PURPOSES, OF THE NET PROCEEDS OF
 10 THE SALE OF ITEMS SEIZED THROUGH THE EFFORTS OF STATE
 11 EMPLOYEES; AND AMENDING SECTIONS 17-7-502, 44-12-102, AND
 12 44-12-206, MCA."

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 15 Section 1. Section 44-12-102, MCA, is amended to read:
 16 "44-12-102. Things subject to forfeiture. (1) The
 17 following are subject to forfeiture:

18 (a) all controlled substances that have been
 19 manufactured, distributed, prepared, cultivated, compounded,
 20 processed, or possessed in violation of Title 45, chapter 9;

21 (b) all money, raw materials, products, and equipment
 22 of any kind that are used or intended for use in
 23 manufacturing, preparing, cultivating, compounding,
 24 processing, delivering, importing, or exporting any
 25 controlled substance in violation of Title 45, chapter 9,

1 except items used or intended for use in connection with
 2 quantities of marijuana in amounts less than 250 grams;

3 (c) except as provided in subsection (2)(d), all
 4 property that is used or intended for use as a container for
 5 anything enumerated in subsection (1)(a) or (1)(b);

6 (d) except as provided in subsection (2), all
 7 conveyances, including aircraft, vehicles, and vessels:

8 (i) which are used or intended for use in unlawfully
 9 transporting or in any manner facilitating the
 10 transportation of anything enumerated in subsection (1)(a)

11 or (1)(b) for the purpose of sale or receipt of such thing;

12 (ii) in which a controlled substance is unlawfully
 13 kept, deposited, or concealed; or

14 (iii) in which a controlled substance is unlawfully
 15 possessed by an occupant;

16 (e) all books, records, and research products and
 17 materials, including formulas, microfilm, tapes, and data,
 18 that are used or intended for use in violation of Title 45,
 19 chapter 9;

20 (f) all drug paraphernalia as defined in 45-10-101;
 21 and

22 (g) everything-of-value-furnished-or--intended--to--be
 23 furnished---in---exchange---for---a---controlled---substance---in
 24 violation-of-Title-45, chapter 9; all proceeds traceable to
 25 such-an-exchange; and all money, negotiable instruments, and

1 ~~securities--used--or--intended--to-be-used-to-facilitate-any~~
 2 ~~violation-of-Title-45,--chapter--9: any real or personal~~
 3 ~~property acquired, maintained, or produced by means of or as~~
 4 ~~a result of a violation of Title 45, chapter 9;~~

5 (h) any real or personal property constituting or
 6 derived from proceeds obtained directly or indirectly by
 7 violation of Title 45, chapter 9; and

8 (i) any real or personal property that assisted,
 9 facilitated, or was used or intended for use in the
 10 commission of a violation of Title 45, chapter 9.

11 (2) (a) No conveyance used by a person as a common
 12 carrier in the transaction of business as a common carrier
 13 is subject to forfeiture under this section unless it
 14 appears that the owner or other person in charge of the
 15 conveyance is a consenting party or privy to a violation of
 16 Title 45, chapter 9.

17 (b) No conveyance is subject to forfeiture under this
 18 section because of any act or omission established by the
 19 owner of the conveyance to have been committed or omitted
 20 without his knowledge or consent.

21 (c) A forfeiture of a conveyance encumbered by a bona
 22 fide security interest is subject to the interest of the
 23 secured party if he neither had knowledge of nor consented
 24 to any violation of Title 45, chapter 9.

25 (d) No conveyance or container is subject to

1 forfeiture under this section if it was used or intended for
 2 use in transporting less than 250 grams of marijuana."

3 Section 2. Section 44-12-206, MCA, is amended to read:

4 "44-12-206. Disposition of proceeds of sale. (1)

5 Whenever property is seized, forfeited, and sold under the
 6 provisions of this chapter, the net proceeds of the sale
 7 must be distributed as follows:

8 (a) to the holders of security interests who have
 9 presented proper proof of their claims, if any, up to the
 10 amount of their interests in the property;

11 (b) the remainder, if any, to the county treasurer of
 12 the county in which the property was seized, who shall
 13 establish and maintain a drug forfeiture fund account and
 14 deposit the remainder into the fund account, except as
 15 provided in subsection subsections (1)(c) through (1)(e);

16 (c) if the property was seized within the corporate
 17 limits of a city or town by a law enforcement agency of that
 18 city or town, the remainder, if any, to the city or town
 19 treasurer, who shall establish and maintain a drug
 20 forfeiture fund account and deposit the remainder into the
 21 fund; account, except as provided in subsections (1)(d) and
 22 (1)(e);

23 (d) if the property was seized by an employee of the
 24 state, the remainder, if any, to the account established in
 25 subsection (3), except as provided in subsection (1)(e); and

(e) if the property was seized as a result of the efforts of more than one law enforcement agency, the remainder, if any, to the accounts required by this subsection (1), pro rata in the proportions represented by the agencies' expenses of investigation, as determined by the attorney general.

(2) All proceeds from any source that are deposited into a county, city, or town drug forfeiture fund account must in each fiscal year be appropriated to, and remain available until expended by, the confiscating agency for drug laws enforcement and education concerning drugs.

(3) There is an account in the state special revenue fund. Net proceeds deposited in the account under subsections (1)(d) and (1)(e) because the property sold was seized by an employee of the state are appropriated, as provided in 17-7-502, to the attorney general for drug laws enforcement and education concerning drugs."

Section 3. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both

of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations:

(a) 2-9-202;

(b) 2-17-105;

(c) 2-18-812;

(d) 10-3-203;

(e) 10-3-312;

(f) 10-3-314;

(g) 10-4-301;

(h) 13-37-304;

(i) 15-31-702;

(j) 15-36-112;

(k) 15-70-101;

(l) 16-1-404;

(m) 16-1-410;

(n) 16-1-411;

(o) 17-3-212;

(p) 17-5-404;

(q) 17-5-424;

1 (r) 17-5-804;
 2 (s) 19-8-504;
 3 (t) 19-9-702;
 4 (u) 19-9-1007;
 5 (v) 19-10-205;
 6 (w) 19-10-305;
 7 (x) 19-10-506;
 8 (y) 19-11-512;
 9 (z) 19-11-513;
 10 (aa) 19-11-606;
 11 (bb) 19-12-301;
 12 (cc) 19-13-604;
 13 (dd) 20-6-406;
 14 (ee) 20-8-111;
 15 (ff) 23-5-612;
 16 (gg) 37-51-501;
 17 (hh) 44-12-206;
 18 {hh}{ii} 53-24-206;
 19 {ii}{jj} 75-1-1101;
 20 {jj}{kk} 75-7-305;
 21 {kk}{ll} 80-2-103;
 22 {ll}{mm} 80-2-228;
 23 {mm}{nn} 90-3-301;
 24 {nn}{oo} 90-1-302;
 25 {oo}{pp} 90-15-103; and

1 {pp}{qq} Sec. 13, HB 861, L. 1985.
 2 (4) There is a statutory appropriation to pay the
 3 principal, interest, premiums, and costs of issuing, paying,
 4 and securing all bonds, notes, or other obligations, as due,
 5 that have been authorized and issued pursuant to the laws of
 6 Montana. Agencies that have entered into agreements
 7 authorized by the laws of Montana to pay the state
 8 treasurer, for deposit in accordance with 17-2-101 through
 9 17-2-107, as determined by the state treasurer, an amount
 10 sufficient to pay the principal and interest as due on the
 11 bonds or notes have statutory appropriation authority for
 12 such payments."
 13 NEW SECTION. Section 4. Extension of authority. Any
 14 existing authority of the department of justice to make
 15 rules on the subject of the provisions of this act is
 16 extended to the provisions of this act.

-End-

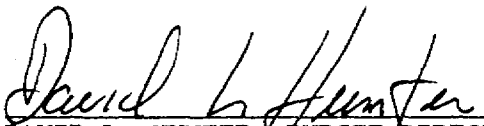
In compliance with a written request, there is hereby submitted a Fiscal Note for SB241, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising and clarifying what items are subject to forfeiture because of their connection to dangerous drug offenses, providing for disposition to the Attorney General for drug laws enforcement and education purposes of the net proceeds of the sale of items seized through the efforts of state employees.

FISCAL IMPACT:

Due to many variables that can not be accurately determined a fiscal impact can not be presented.

 DATE 2/2/87
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

 DATE 2-3-87
THOMAS KEATING, PRIMARY SPONSOR
Fiscal Note for SB241, as introduced.

CHAIRMAN--SEN. JOE MAZUREK
NORMAL SCHEDULE==> SITE: ROOM 325

DAYS: MON THRU FRI

TIME: 10:00 A.M.

SECRETARY-MARY HUBER

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0229	1/27	2/10		PASS AS AMENDED		2/16
MAZUREK, JOSEPH P.			PROHIBIT COURT-ORDERED PLACEMENT IN COMMUNITY-BASED SERVICES			
SB0241	1/28	2/06		PASS AS AMENDED		2/20
KEATING, THOMAS F.			REVISE LAW RELATING TO FORFEITURE AND SALE OF ITEMS RELATING TO DRUG OFFENSE			
SB0249	1/29	2/10		PASS AS AMENDED		2/12
BLAYLOCK, CHET			REMOVE TERMINATION OF GOVERNMENTAL TORT LIABILITY LIMITS			
SB0252	2/02	2/11		PASS AS AMENDED		2/18
REGAN, PAT			PERMIT DISABILITY INSURANCE POLICIES TO CONTAIN A SUBROGATION CLAUSE			
SB0256	1/30	2/09		PASS AS AMENDED		2/19
JACOBSON, JUDY H.			CLARIFY SRS RESPONSIBILITY IN CUSTODY INVESTIGATIONS			
SB0258	1/30	2/09		PASS AS AMENDED		2/19
BROWN, ROBERT J.			REVISE LAWS RELATING TO TRAINING OF JUSTICES OF THE PEACE			
SB0261	2/02	2/13		PASS AS AMENDED		2/16
BROWN, ROBERT J.			INCREASE PENALTY FOR DRUG SALE TO MINOR NEAR A SCHOOL			
SB0269	2/02	2/13		TABLED		tabled on 2/16 -
KOLSTAD, ALLEN C.			GENERALLY REVISE LAW ON CORONERS			
SB0275	2/03	2/13		DO PASS		2/16
JERGESON, GREG			CONSIDER PARENTAL RESOURCES FOR MINORS APPOINTED COUNSEL IN HOMICIDE CASE			
SB0289	2/05	2/16		PASS AS AMENDED		2/16
VAN VALKENBURG, FRED			AUTHORIZE PRESIGNED EXTRADITION WAIVERS			
SB0303	2/06	2/11		PASS AS AMENDED		2/16
HALLIGAN, MIKE			REVISE PROCEDURES FOR CHILD ABUSE PROSECUTION			

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

February 6, 1987

The twenty-third meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on February 6, 1987 by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All members were present.

CONSIDERATION ON SB 241: Senator Tom Keating of Billings introduced SB 241 (see Exhibit 1).

PROPOSERS: Gary Carrell, Department of Justice, supported the bill (see Exhibit 2, written testimony).

Mark Murphy, Attorney General's Office, said the bill expands along the same line as the federal government allows with forfeitures of drug offender's property. He stated the state uses a civil procedure while the federal government usually use a criminal procedure. He felt the bill allows good cooperation between the federal agencies and state agencies that deal with drug trafficking. He felt the bill will allow more enforcement also.

Kevin Olson, Havre Police Department, supported the bill (see Exhibit 3).

OPPOSERS: None

DISCUSSION ON SB 241: Senator Pinsoneault asked if someone is raising marijuana on a 1 acre plot that is part of a 40 acre plot, would the offender have to forfeit over the whole 40 acres. Mr. Murphy said the property that is used in the offense will be taken, but if the rest of the property is found to be used as a concealer, then the law could take all 40 acres. Senator Pinsoneault asked how the department plans to get rid of the property, so the department just doesn't sit with the property. Mr. Murphy said it is treated as a tax seizure and is sold under a tax deed. Senator Pinsoneault questioned on page 2 of the bill that if someone had 300 grams of marijuana, the court could take the car the police stopped the offender in, but if the amount the offender was carrying was only 250 grams, then you could not take the car that he was driving at the time. Mr. Murphy replied that was correct.

Senator Crippen asked what will happen to property that is seized that is jointly owned and the second co-owner doesn't know about the first

one's drug dealings. Mr. Murphy responded that there is an expressed provision that will tell what the outcome will be in every situation. He said the petition must be presented in front of the district court who makes the decision of who was innocent in the drug matter and who should be able to keep what property or not keep the property. He said the primary use of the property has to be innocent from the drug offense. Senator Crippen asked how will the courts handle property that have liens on it before they seized it. Mr. Murphy said the federal law allows the federal government to be substituted as the individual who had to forfeit. He said sometimes liens are used for borrowing money to run the drug operation.

Senator Halligan inquired how this bill really protect the innocent victims who didn't know there was anything going on. Mr. Murphy felt sections in Title 44, part 12, protect innocent lien owners, or rental car owners who rent a car to an offender.

Senator Bishop asked if a mortgage holder, who is not the offender, loses property, can that person buy the property back from the department. Mr. Murphy responded the present procedure in the federal government law is the property will be subject to a sale and if the innocent party shows interest in the property which is of greater value than the property, the property probably will not be seized.

Senator Mazurek asked Senator Keating about page 5, line 12, and an amendment that he mentioned. Senator Keating stated the proceeds would go into a special fund and the money would be appropriated by the legislature. He said this conversation has been going on in the House Appropriation Committee for the last four years. He said many counties have a drug task force funded by the Coal Board, which is running out of money. He said forfeiture will not fund the whole program, but it will help. He said under the forfeiture law it states that any property that is seized and sold the profits go to fund the drug enforcement program. He said the interest from this account will go to the General Fund.

Senator Beck asked what this bill will do to the funds the counties are getting now for this program. Senator Keating said the counties will get funds for their work toward enforcing drug trafficking. He said the counties share enforcement duties with the state. Senator Beck asked if the state can go into a county and investigate drug trafficking or production without the county knowing it. Senator Keating said they can if they choose to but the practice has been to cooperate between the two levels. Mr. Carrell said the state and counties always work together.

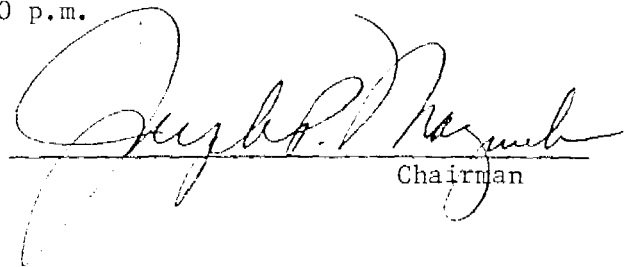
Senator Keating said he would work with Valencia Lane on an amendment for page 5, line 12 and if there are any others that might come up.

with both sides of a dispute because if they do then things are probably being said that should not be from both sides. The committee decided to wait on the bill and send it to the law school to see what they had to say about this issue. Senator Pinsoneault moved to TABLE the bill. The motion CARRIED.

ACTION ON SB 241: Senator Blaylock felt there should be clearer language dealing with the innocent parties who might be involved in this kind of forfeiture. Senator Pinsoneault thought the committee should have more faith in the court system when it comes to innocent parties. Senator Blaylock asked if the authorities could take away a rented apartment from the owner because a tenant was growing marijuana in it. Senator Mazurek said if a person buys cattle with drug money, the cattle are forfeited to the authorities. The committee decided to wait.

ACTION ON HB 21: Valencia gave the committee amendments (see Exhibit 7). Mike Males also gave the committee the bill with his amendments in it (see Exhibit 8). Senator Crippen agreed with Mr. Males about the 20 year old home owner being able to drink. Senator Crippen said agreed with Males on the whole bill. Senator Mazurek asked how many wanted to just pass the bill with the technical amendments that Valencia gave the committee. The straw vote was three to seven. Valencia said the federal law is worried about the possession of alcohol and in Males's bill he fines a person under the age of 18 a \$50 fine for possession. Senator Crippen asked how many other states have Males's kind of law. Senator Yellowtail said Wyoming and North Dakota have this. Senator Mazurek asked Valencia to look at the federal rule on the drinking age and see if Mr. Males's bill could fit in.

The committee was adjourned at 12:00 p.m.


Chairman

50th LEGISLATIVE SESSION -- 1987

Date Feb. 6

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>	✓		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blaylock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

DATE Feb. 6

COMMITTEE ON _____

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

SUMMARY OF SB241 (KEATING)

(Prepared by Senate Judiciary Committee staff)

SB241 is by request of the Department of Justice. This bill revises and clarifies the laws relating to seizure and forfeiture of items related to dangerous drug offenses. This bill broadens the scope of application of the law as to what items are subject to forfeiture. Under current law, one of the things that forfeiture applies to is "everything of value furnished or intended to be furnished in exchange for dangerous drugs, all proceeds traceable to such a exchange, and all money, negotiable instruments, and securities used or intended to be used to facilitate" a crime involving dangerous drugs. Under this bill, the above category is broadened to include real or personal property :: (a) acquired, maintained, or produced by means of or as a result of a dangerous drugs violation: (b) constituting or derived from proceeds obtained directly or indirectly by a dangerous drugs violation; or (c) that assisted, facilitated, or was used or intended for use in the commission of a dangerous drugs violation.

This bill also provides that a portion of the proceeds of items seized through the efforts of state employees shall go to the state in a special revenue fund and be statutorily appropriated to the attorney general for purposes of drug laws enforcement and education concerning drugs. Under current law, only local government law enforcement agencies receive a portion of the forfeiture proceeds.

C:\LANEWP\SUMSB241.

My name is - - - - -

Speaking as a proponent

We feel expansion of the forfeiture statute to include real and personal property is an important element in the efforts of law enforcement agencies at the city, county, and state level's ability to address the supply side of the drug abuse problem in our state.

Some of these drug traffickers are reaping huge tax free profits - and it presents a problem for them - what to do with their money.

If they use those profits to acquire or maintain ~~personal~~ real property - it could be ^{forfeited} ~~seized~~ if this Bill is passed.

If they use real property to produce illegal substances it could be forfeited.

This Bill also allows the state to receive and expend ^{a share of} drug forfeiture money if we are involved in the case. - We have agents who have worked dangerous drug investigations for a number of years - but there ~~state~~ is currently no provision for the state to receive a share of any money generated as a result of those investigations.

Additionally it provides a method of distributing forfeitures when more than one law enforcement agency participates in ~~an investigation~~ a case.

This is almost always the case - as it should be - Most drug investigations originate at the local level. However the investigation usually, within a short period of time, reveals that the individual(s) involved move across jurisdictional boundaries. At that point the original agency would normally contact a law enforcement agency in a neighboring county or the state.

* Under federal law, the U.S. Attorney determines the proportion of proceeds.

The amount of money ~~generated~~ forfeited depends on the resources available to work the problem.

Legal & illegal
assets seized

In most cases, in order to seize substantial amounts from the individuals doing this on a regular basis, it takes a substantial amount of time and requires personnel assigned specifically to that function.

Right now I believe we have approx 12 or 13 police officers, deputy sheriffs, and CIB agents assigned exclusively to drug enforcement in the entire state.

This is an excellent and I believe necessary tool. - But we can have a shop full of very functional tools - and the work doesn't get done if there are few people to use them.

My NAME IS KEVIN OLSON, I AM A
POLICE OFFICER FOR THE CITY OF HAURE
AND AM HERE TODAY REPRESENTING
THE HAURE POLICE DEPT. AND THE
MONTANA POLICE PROTECTIVE ASSOCIATION.

I AM HERE TO ENDORSE AND FULLY
SUPPORT SENATE BILL 241 INTRODUCED
BY SENATOR KEATING.

PART OF THIS BILL WOULD ENABLE
ANY LAW ENFORCEMENT AGENCY THAT
PARTICIPATES IN A DRUG INVESTIGATION
TO SHARE IN THE PROCEEDS THAT
RESULT FROM FORFEITURES AND SEIZURES.

THE CRIMINAL INVESTIGATION BUREAU
AS BEEN A INVALUABLE RESOURCE IN
THE PAST 3 YEARS FOR THE
HAURE POLICE DEPT., NOT ONLY IN
IN DRUG INVESTIGATIONS BUT ALSO IN
ASSISTING IN INVESTIGATING OTHER SERIOUS
CRIMES.

I HAVE BEEN COORDINATING DRUG INVESTIGATION
FOR THE HAURE POLICE DEPT. FOR THE
PAST 3 YEARS.

DURING THIS TIME, THE HAURE POLICE

DEPT. AND HILL COUNTY SHERIFF'S DEPT. HAVE CREATED A DRUG TASK FORCE TO COMBAT DANGEROUS DRUG CRIMES IN THE HAURE - HILL COUNTY AREA.

WITH THE CREATION OF THIS TASK FORCE, THE CRIMINAL INVESTIGATION BUREAU WAS CALLED UPON FOR ASSISTANCE AND ADVICE.

AFTER ~~SEVERAL~~ NUMEROUS TRIPS TO HAURE BY THE CRIMINAL INVESTIGATION BUREAU, WE MADE SEVERAL ARRESTS OF PERSONS SELLING AND DISTRIBUTING DANGEROUS DRUGS.

AS A RESULT OF THESE ARRESTS, SOME MONIES AND PROPERTY WAS WERE SEIZED AND FORFEITED.

HOWEVER, DUE TO CURRENT STATE LAW, THE CRIMINAL INVESTIGATION BUREAU COULD NOT SHARE ANY OF THESE PROCEEDS OF THESE SEIZURES, EVEN THOUGH THEY PLAYED A VITAL ROLE IN MAKING THESE CASES SUCCESSFUL.

AS A RESULT OF INVESTIGATING DANGEROUS DRUG CRIMES AS A MEMBER OF A SMALLER POLICE DEPT., WE HAVE EXPERIENCED SOME PROBLEMS THAT

HAVE BEEN DIFFICULT TO OVERCOME.

ONE, FINANCING THESE TYPE OF INVESTIGATIONS.

TWO, TRYING TO GET WELL QUALIFIED AND EXPERIENCED PERSONAL TO ASSIST.

WITH THE PASSAGE OF THE DRUG FORFEITURE AND SEIZURE LAWS IN 1983, WE HAVE FOUND NEW WAYS TO HELP FINANCE DRUG INVESTIGATIONS.

THIS BY TAKING PROFITS AND PROCEEDS THAT CRIMINALS HAVE ACCUMULATED AS A RESULT OF PARTICIPATING IN THE SALE AND DISTRIBUTION OF DANGEROUS DRUGS.

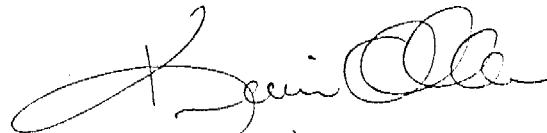
WITH THE PASSAGE OF THIS BILL, I FEEL THAT OBTAINING ASSISTANCE FROM OTHER AGENCIES WILL BECOME EASIER BECAUSE NOW THESE OTHER AGENCIES CAN SEE A DIRECT FINANCIAL ADVANTAGE IN COORDINATING THEIR EFFORTS WITH ONE ANOTHER.

IT WOULD ONLY MAKE GOOD REASONABLE SENSE TO ALLOW ALL AGENCIES PARTICIPATING IN THESE TYPE OF

INVESTIGATIONS , TO SHARE IN THE
PROCEEDS ACCUMULATED FROM THESE
INVESTIGATIONS.

THANK YOU FOR YOUR TIME AND
CONSIDERATION IN REGARDS TO THIS
BILL

I WOULD BE HAPPY TO TRY
TO ANSWER ANY QUESTIONS YOU
MAY HAVE.



KEVIN OLSON

HAURE POLICE DEPT.

MONTANA POLICE PROTECTIVE ASSOC.

NAME: KEVIN OCSO DATE: 2-6-87

ADDRESS: A 520 4^{1/2} ST. NAUPE, NR SINGU

PHONE: 265- 4361

REPRESENTING WHOM? HAVER POLICE DEPT + MONTANA POLICE
PROTECTIVE ASSOC.

APPEARING ON WHICH PROPOSAL: SB 251

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: MARK J MURPHY DATE: 2/6/87

ADDRESS: 3840 Kik. Dr
HELENA

PHONE: 444-3816

REPRESENTING WHOM? ATTORNEY GENERAL'S OFFICE

APPEARING ON WHICH PROPOSAL: SB 241

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME :

DATE: 2/4/82

ADDRESS :

PHONE :

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU :

SUPPORT?

AMEND?

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Judiciary Committee
Minutes of the meeting
February 20, 1987 7:00 a.m.
page 2

Senator Beck felt a bank clerk did not need a drug test. He said the committee better define what jobs they want tested and the ones they don't care if they are tested.

Senator Crippen felt a subjective test will get an employer into a law suit because there is not much of a definition to a subjective test.

The committee asked Valencia to find some language to define security jobs and high risk jobs into an amendment for the 10:00 a.m. meeting.

ACTION ON SB 223: Senator Beck moved SB 223 from the TABLE. The motion CARRIED. Valencia presented amendments to the bill (see Exhibit 2). Senator Brown moved the amendments. The motion CARRIED. Senator Crippen moved the bill DO PASS AS AMENDED. The motion CARRIED.

ACTION ON SB 241: Valencia explained amendments to the bill that she prepared (see Exhibit 3). She explained that some of the amendments (5 and 6) were requested by the sponsor. Senator Pinsoneault moved the new subsection 3 and the rest of the amended language. Senator Halligan thought the language was too strict in the disposition of property following a hearing. The motion CARRIED. Senator Halligan moved the bill DO PASS AS AMENDED. The motion CARRIED.

ACTION ON SB 361: Senator Mazurek said this bill allows the department to set guidelines to see what they could provide these mentally disturbed kids with. Senator Mazurek pointed out private or public schools can not do anything with a mentally disturbed child until he commits a criminal offense. Steve Nelson, Board of Crime Control and Joy McGrath, AG's Office, presented amendments to the bill (see Exhibit 4). Senator Halligan moved the amendments. Senator Mazurek asked what the fiscal note will look like with these amendments. Mr. Nelson said he did not know. The motion CARRIED.

Senator Crippen moved the bill DO PASS AS AMENDED. The motion CARRIED.

Senator Halligan moved the STATEMENT OF INTENT. The motion CARRIED.
(See STATEMENT OF INTENT)

ACTION ON SB 96: Senator Halligan moved SB 96 from the TABLE. The motion CARRIED with Senators Galt, Pinsoneault, and Crippen voting no. Senator Lybeck explained he never heard a thing from the committee about the bill and would like to see the bill passed out of committee. Senator Halligan moved the bill DO PASS. The motion CARRIED with Senators Galt, Pinsoneault, and Crippen voting no.

ACTION ON SB 137: Senator Weeding asked for the committee to consider SB 137 one more time because it is a desperately needed bill. Senator

50th LEGISLATIVE SESSION -- 1987

Date Feb. 20th
7:00 am

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blavlock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		X
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

Proposed Amendments to SB 241

1. Title, line 9.
Following: "ENFORCEMENT"
Strike: "AND EDUCATION"

2. Title, line 11.
Following: "SECTIONS"
Strike: "17-7-502,"
Following: "44-12-102,"
Insert: "44-12-205,"

3. Page 4, line 3.
Following: line 2
Insert: "Section 2. Section 44-12-205, MCA, is amended to read:
"44-12-205. Disposition of property following hearing.

(1) If the court finds that the property was not used for the purpose charged or that the property listed in 44-12-102(1)(g) was used without the knowledge or consent of the owner, it shall order the property released to the owner of record as of the date of the seizure.

(2) If the court finds that the property was used for the purpose charged and that the property listed in 44-12-102(1)(g) was used with the knowledge or consent of the owner, the property shall be disposed of as follows:

(a) If proper proof of his claim is presented at the hearing by the holder of a security interest, the court shall order the property released to the holder of the security interest if the amount due him is equal to or in excess of the value of the property as of the date of seizure, it being the purpose of this chapter to forfeit only the right, title, or interest of the owner. If the amount due the holder of the security interest is less than the value of the property, the property must be sold at public auction by the sheriff of the county in which the seizure was made in the same manner provided by law for the sale of property under execution or the state may return the property to the holder of the security interest without proceeding with an auction.

(b) If no claimant exists and the confiscating agency wishes to retain the property for its official use, it may do so. If such property is not to be retained, it must be sold as provided in subsection (2)(a).

(c) If a claimant who has presented proper proof of his claim exists and the confiscating agency wishes to retain the property for its official use, it may do so provided it compensates the claimant in the amount of the security interest outstanding at the time of the seizure.

(3) In making a disposition of property under this chapter, the court may take any action to protect the rights of innocent persons [alternative language: that is in the interests of justice and that is not inconsistent with the provisions of this chapter]."

Renumber: subsequent sections

4. Page 5, line 12.

Following: "(3)"

Strike: "there is"

Insert: "Net proceeds received under subsections (1)(d) and (1)(e) must be deposited in"

5. Page 5, lines 13 through 17.

Following: "fund"

Strike: the remainder of line 13 through line 17

Insert: "to the credit of the department of justice. The department may expend the money in the account, as appropriated by the legislature, only for purposes of enforcement of drug laws."

6. Page 5, line 18 through line 12, page 8.

Following: line 17

Strike: Section 3 in its entirety

MR. PRESIDENT

SENATE JUDICIARY

We, your committee on.....

SENATE BILL

No. 241

having had under consideration.....

first

white

reading copy ()

color

Revise law relating to forfeiture and sale of items relating to drug offense.

SENATE BILL

ENE SEN

241

Respectfully report as follows: That.....

No.

MCA BE AMENDED AS FOLLOWS:

1. Title, line 9.

Following: "ENFORCEMENT"

Strike: "AND EDUCATION"

2. Title, line 11.

Following: "SECTIONS"

Strike: "17-7-502,"

Following: "44-12-102,"

Insert: "44-12-205,"

3. Page 4, line 3.

Following: line 2

Insert: "Section 2. Section 44-12-205, MCA, is amended to read:
"44-12-205. Disposition of property following hearing.

(1) If the court finds that the property was not used for the purpose charged or that the property listed in 44-12-102(1)(g) was used without the knowledge or consent of the owner, it shall order the property released to the owner of record as of the date of the seizure.

(2) If the court finds that the property was used for the purpose charged and that the property listed in 44-12-102(1)(g) was used with the knowledge or consent of the owner, the property shall be disposed of as follows:

DU PASS

DU PASS

RE CONTINUED

Senator Hazarek

Chairman.

STATUS SHEET

50th LEGISLATIVE SESSION

JUDICIARY

COMMITTEE

SENATE BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURRE IN AS AMENDED DATE
181		3/13/87								3/24/87	
189		3/9/87								3/19/87	
190		3/9/87	tabled 3/10/87							reconsidered 4/8/87	
195		3/9/87						3/10/87			
214		3/11/87						3/13/87			
223		3/18/87						3/23/87			
225		3/6/87						3/10/87			
226		3/16/87								3/23/87	
229	3/3/87	3/12/87	tabled 3/23/87					reconsidered 3/26/87			
241		¹² 3/16/87								3/23/87	
249		3/10/87						3/13/87			
254		3/10/87	tabled 3/11/87								
256		3/4/87	3/4/87					3/4/87			
257		3/16/87						3/25/87			

se a separate sheet for Senate Bills, House Bills, and Resolutions.

ALFRED M. ELWELL, Montana Weapons Coalition, commented that he supports the legislation one hundred percent.

REP. JOHN MERCER, went on record in support of this bill.

OPPONENTS: BILL ROSSBACH, MTLA, (See Visitors' Register Attached).

QUESTIONS (OR DISCUSSION) ON SENATE BILL NO. 121: Rep. Miles asked Senator Brown about where design defects come into play. He explained that it gets into the reasonable manned area, if it presents a hazard in a typical situation and a manufacturer could get nailed for a design problem.

Rep. Eudaily asked Mr. Judy about subsection 3 and wondered what improper design means. He stated it goes back into the manufacturing process and if the safety of the firearm is of poor nature and it does not work effectively but the trigger could still be pulled while the safety was on, that is certainly a cause for action.

Senator Brown closed the hearing on SB 121 by stating that this bill says the gun is defectless and there should not be any liability. The bill does not protect an illegal firearm, or a defective firearm. This bill has been modeled after legislation in effect in other states.

SENATE BILL NO. 363: Senator Jacobson, District No. 36, stated that this bill established the minimum amount that must be deducted from an obligor's income under the child support income deduction act of 1981. She pointed out that in most cases where a provider must deduct 50% from his earnings for child support payments he or she will simply quit the job rather than pay the child support. This bill establishes a minimum of 25% so that a judge will have flexibility in setting the deduction between 25 and 50 percent to avoid that problem of feeling it is more beneficial to just quit their job. This is simply a matter that something is better than nothing.

THERE WERE NO PROPONENTS, OPPONENTS OR QUESTIONS.

Senator Jacobson closed the hearing on SB 363.

SENATE BILL NO. 241: Senator Keating, District No. 44, pointed out that this bill is a drug forfeiture bill and deals with the forfeiture of property that is legal property that may be obtained in a drug bust along with illegal property, that is the drugs itself. He stated at the present time the Federal Government can take onto itself that property belonging to someone who has broken the law and convert it into cash and put it into their account. At

the local level of government, sheriffs and police can do the same thing. The state has no forfeiture claim law on the books at the present time and the drug enforcement task force is instrumental in a number of drug bust enforcement and they have acquired property and yet they cannot move any of that money into a state special fund because there is no provision for it. This bill establishes that the net proceeds from a drug bust must be deposited into an account for the state special revenue fund to the credit of the Department of Justice. The account is to be used only for the purpose of drug enforcement. The money does not revert to the general fund. He stated that there is a provision for innocent persons. The convicted person is the only one that loses.

PROPOSERS: MARK J. MURPHY, Attorney General's Office, submitted a copy of the forfeiture statute from Title 21 of the US Code, 21 Section 881. (Exhibit A). He pointed out that the procedural requirements are good and he urged support for this legislation.

GARY J. CARRELL, Montana Criminal Investigation Bureau, Chief, for the Department of Justice, stated the drug problem in Montana is growing and the victims need protection. He urged support for SB 241.

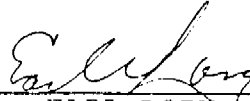
OPPOSERS: ROBERT SCOTT, stated that Chapter 9 authorizes the forfeiture of the fruits of a life's work of tens of thousands of dollars value, unjustified, it is also counter-productive in that it removes much of the incentive to abandon use of the substance controlled. Also, application of the statute to possessory offenses is almost certainly a violation of the Eighth Amendment to the United States Constitution (prohibiting cruel and unusual punishment). If the intent here is to deprive the wrongdoer of his ill-gotten gains which have been used to finance real or personal property, proposed subsection 44-12-102(1)(i) MCA, as well as proposed subsection 4-12-102(1)(g), are overbroad, unnecessary and should be deleted. He submitted written testimony. (Exhibit B).

There were no further opponents and no questions.

Senator Keating closed the hearing on SB 241 by stating that the State of Montana has been trying to find ways of funding the drug enforcement task force and to say that we have a problem in this state with drugs is an understatement. Drugs is a very serious problem because we lack enforcement, because we lack the means of funding this enforcement. Montana is known as a drop state. We must do something drastic and serious and bring it to the mind of the criminal that drugs is a losing situation, he said. He urged that a

serious consideration be taken on this bill. The forfeiture money can be used to fight the enemy.

ADJOURNMENT: There being no further business to come before the committee, the hearing was adjourned at 12:18 p.m.



EARL LORY, Chairman

DAILY ROLL CALL
JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 18, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)		✓	✓
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)		✓	✓
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

10. Suppression of evidence

Where inspection of defendant's premises was conducted following issuance of inspection warrant under this section, inspection was limited to administrative inspection and was conducted in accordance with this section, any matters revealed by such inspection were not subject to suppression in criminal proceedings. *U. S. v. Prendergast*, D.C.Pa.1977, 438 F.Supp. 931, affirmed 585 F.2d 69.

Where subsequent statements made by defendant were directly related to information gathered by Drug Enforcement Agency compliance officers as result of illegal search of defendant's pharmacy, defendant was entitled to suppression of such statements. *U. S. v. Enserro*, D.C. N.Y.1975, 401 F.Supp. 460.

§ 881. Forfeitures

Property subject

(a) The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this subchapter.

(2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this subchapter.

(3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2).

(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1) or (2), except that—

(A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this subchapter or subchapter II of this chapter; and

(B) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any State.

(5) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this subchapter.

(6) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any

person in exchange for a controlled substance in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

Seizure pursuant to Supplemental Rules for Certain Admiralty and Maritime Claims

(b) Any property subject to forfeiture to the United States under this subchapter may be seized by the Attorney General upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when—

(1) the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the United States in a criminal injunction or forfeiture proceeding under this subchapter;

(3) the Attorney General has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) the Attorney General has probable cause to believe that the property has been used or is intended to be used in violation of this subchapter.

In the event of seizure pursuant to paragraph (3) or (4) of this subsection, proceedings under subsection (d) of this section shall be instituted promptly.

Custody of Attorney General

(c) Property taken or detained under this section shall not be replevable, but shall be deemed to be in the custody of the Attorney General, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under the provisions of this subchapter, the Attorney General may—

(1) place the property under seal;

(2) remove the property to a place designated by him; or

(3) require that the General Services Administration take custody of the property and remove it to an appropriate location for disposition in accordance with law.

Other laws and proceedings applicable

(d) The provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of

Notes of Decisions

2. Scope of inspections

Administrative inspection warrants authorized by this section may not be used for any and all purposes listed in this subchapter including investigations designed solely to result in criminal prosecutions; while statutory scheme in this subchapter includes both regulatory and criminal enforcement functions, the reason for such inclusion was to bring together, in one comprehensive statute, functions previously assigned to a variety of agencies under several statutes, not to blur the distinctions between regulatory and criminal functions. *U.S. v. Lawson*, D.C.Md.1980, 502 F.Supp. 158.

5. Probable cause—Generally

Administrative inspection warrant issued under this section in order to uncover evidence in support of criminal investigation, was valid, inasmuch as it was based on an administrative showing of probable cause and the search was conducted in accordance with this section. *U.S. v. Acklen*, C.A.Tenn.1982, 690 F.2d 70.

Issuing magistrate could have inferred reasonably from facts before him that substantial period of time had passed since last inspection of pharmacy where one fact sworn to before the magistrate was that the pharmacy had been inspected "approximately three years ago . . .," and thus predicate existed for finding of probable cause required for search warrant issued under this section. *U.S. v. Osborne*, D.C.Tenn.1980, 512 F.Supp. 413.

7. Statements authorizing inspections

Warrant authorizing search and seizure of physician's patient medication cards based on government's representation in application for warrant that premises to be searched had never before been inspected was valid. *U.S. v. Voorhies*, C.A.

Tenn.1981, 663 F.2d 30, certiorari denied 102 S.Ct. 1997, 456 U.S. 929, 72 L.Ed.2d 415.

10. Suppression of evidence

Even though landlord thought that premises could be repossessed for nonpayment of rent due, neither defendant nor anyone else had been seen entering or leaving apartment for some time prior to search, and there was no evidence that defendant ever returned after search, where evidence failed to establish that defendant had abandoned premises, search of premises and seizure of evidence was improper and all evidence seized was required to be suppressed as to defendant in defendant's prosecution for violation of this chapter. *U.S. v. Hossbach*, D.C.Pa.1980, 518 F.Supp. 759.

Where defendants left miscellaneous cartons of chemicals, pieces of equipment and trash at public rental warehouse, with door open, and contents in plain view of others who might happen by, and later returned key to landlord with no request to secure remaining contents, defendants manifested lack of any legitimate expectation of privacy in property seized and such property was not required to be suppressed in defendant's prosecution for violations of this chapter. *Id.*

Alleged deficiency of search warrant issued pursuant to this section, that it did not state adequately grounds for its issuance, did not justify application of rule excluding evidence discovered in execution of the warrant. *U.S. v. Osborne*, D.C.Tenn.1980, 512 F.Supp. 413.

Although government's use of administrative warrants to seize pharmacy records violated pharmacists' rights under U.S.C.A. Const. Amend. 4, indictment based on filing of fictitious prescriptions was not thereby rendered defective; however, evidence seized during subject searches was to be excluded from any criminal trial. *U.S. v. Lawson*, D.C.Md.1980, 502 F.Supp. 158.

§ 881. Forfeitures

(a) Property subject

The following shall be subject to forfeiture to the United States and no property right shall exist in them:

[See main volume of text of (1) to (6)]

(7) All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this title punishable by more than one year's imprisonment, except that no property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

(8) All controlled substances which have been possessed in violation of this subchapter.

(b) Seizure pursuant to Supplemental Rules for Certain Admiralty and Maritime Claims

Any property subject to civil or criminal forfeiture to the United States under this subchapter may be seized by the Attorney General upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when—

[See main volume for text of (1) to (3)]

SUMMARY OF ARGUMENT IN OPPOSITION TO SB 241 AMENDING (inter alia)

SECTION 44-12-102 MCA

Robert Scott -- 18 March, 1987

B
318-87
SB #241

I. THE PRESENT EFFECT OF TITLE 44, CHAPTER 12, MCA.

Section 44-12-102 MCA authorizes civil forfeiture of controlled substances, paraphernalia for their use, proceeds connected with their sale, records of sales and manufacture, as well as items of personal property specified in that Section which are closely connected with the manufacture, transportation or sale of such substances.

In civil forfeiture, suspect property is seized on discovery, the owner thus being deprived of its use. See Section 44-12-103 MCA. At the hearing, it is presumed that the property is already forfeit (44-12-203 MCA), therefore the owner of the seized property, in order to prevent forfeiture, has the burden of either (1) proving that the property was not used for the purpose charged; or (2) proving that the property was so used without his knowledge or consent. See Section 44-12-204 MCA. In other words, in a civil proceeding the person's property is presumed forfeit (guilty of being used for unlawful activity) and that person must then prove its 'innocence,' the exact opposite of a criminal proceeding where the person is innocent until proven guilty. Often, the practical result of this dichotomy is that, though a person be found not guilty of the criminal charges against him (relating to the seized property), he is nonetheless deprived of the seized property due to the greater difficulty of overcoming the presumption that the property is forfeit.

II. THE EFFECT OF SB 241 ON TITLE 44, CHAPTER 12, MCA,

With the amendments proposed in SB 241, deleting present subsection 44-12-102 (1)(g) and adding new subsections 44-12-102 (1)(g) through (1)- the

B
3-18-87
SB # 241

categories of property subject to seizure and forfeiture would be expanded to include any real or personal property bearing virtually any connection with the violation of any provision of Title 45, Chapter 9.

As Chapter 9 includes the offense of simple possession (see 45-9-102) of a controlled substance as well as sales related offenses, these proposed amendments would in fact authorize the forfeiture of a home or other real property (entire farm or ranch) for mere possession of a controlled substance (including a misdemeanor quantity of marijuana). Not only is such a sweeping law, which authorizes the forfeiture of the fruits of a life's work of tens of thousands of dollars value, unjustified, it is also counterproductive in that it removes much of the incentive to abandon use of the substance controlled. Also, application of the statute to possessory offenses is almost certainly a violation of the Eighth Amendment to the United States Constitution (prohibiting cruel and unusual punishment).

In Summary: If the intent here is to deprive the wrongdoer of his ill-gotten gains which have been used to finance real or personal property, proposed subsection 44-12-102 (1)(i) MCA, as well as proposed subsection 44-12-102 (1)(g), are overbroad, unnecessary and should be deleted.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

SENATE

BILL NO.

24!

DATE _____

March 18, 1987

SPONSOR

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

ACTION ON SENATE BILL NO. 223:

Rep. Bulger moved that SB #223, Be Concurred In. Question was called and a voice vote was taken. The motion CARRIED unanimously. SB #223, BE CONCURRED IN.

ACTION ON SENATE BILL NO. 226:

Rep. Strizich moved that SB #226, Be Concurred In. Rep. Mercer moved an amendment on page 3, line 22, inserting the language "youth and the" following "ability of the". Question was called and a voice vote was taken. The motion CARRIED UNANIMOUSLY. (See Amendment Attached). Rep. Strizich moved that SB #226, Be Concurred In As Amended. Question was called and voice vote was taken. The motion CARRIED unanimously. SB #226, BE CONCURRED IN AS AMENDED.

ACTION ON SENATE BILL NO. 241:

Rep. Bulger moved that SB #241, Be Concurred In. Rep. Bulger moved amendments. Discussion followed with Rep. Mercer supporting the amendments. Question was called and a voice vote was taken. The motion CARRIED 14-1 with Rep. Giacometto dissenting. (See Amendments Attached). Rep. Bulger moved that SB #241 Be Concurred In As Amended. Mr. MacMaster stated that there are some clean up amendments on page 6, line 24. Rep. Mercer moved to clean up amendments. The motion CARRIED unanimously. Question was called on the bill and a voice vote was taken. The motion CARRIED 14-1 with Rep. Brown dissenting. SB #241, BE CONCURRED IN AS AMENDED.

ACTION ON SENATE BILL NO. 229:

Rep. Rapp-Svrcek moved that SB #229, Be Concurred In. Rep. Miles opposed the motion stating that she opposes because she is not sure what function the court will be able to serve. Rep. Rapp-Svrcek pointed out that the people who can afford an attorney to take the case into the court, the judge can then place them ahead of people on the waiting lists. He stated that it is an equitable situation and this bill would prevent that from happening. Rep. Bulger stated that the attorney from the Board of Visitors opposed this bill. Question was called and a voice vote was taken. The motion FAILED 6-7. Rep. Miles moved to table the bill. A voice vote was taken and the motion CARRIED 10-5. SB #229, TABLED.

ACTION ON SENATE BILL NO. 102:

Rep. Cobb moved that the Statement of Intent Be Concurred In. Question was called and a voice vote was taken. The motion CARRIED unanimously.

DAILY ROLL CALL
JUDICIARY COMMITTEE

10th LEGISLATIVE SESSION -- 1987

Date March 23, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

STANDING COMMITTEE REPORT

MARCH 23,

19

19

JUDICIARY

Mr. Speaker: We, the committee on
SENATE BILL NO. 241
report

☐ do pass
☐ do not pass

☒ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

Chairman

1. Page 3, line 1, insert 4.

2. Page 3, line 1, insert 4.

3. Page 3, line 1, insert 4.

4. Page 3, line 1, insert 4.

5. Page 3, line 1, insert 4.

6. Page 3, line 1, insert 4.

7. Page 3, line 1, insert 4.

8. Page 3, line 1, insert 4.

9. Page 3, line 1, insert 4.

10. Page 3, line 1, insert 4.

11. Page 3, line 1, insert 4.

mercer

THIRD

BLUE

REP. MERCER WILL CARRY THE BILL!

reading copy ()

color